

STATE OF MICHIGAN
COURT OF APPEALS

In re TALON RICHARD WOOSTER.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellant,

v

TALON RICHARD WOOSTER,

Respondent-Appellee.

UNPUBLISHED

March 1, 2005

No. 248122

Presque Isle Circuit Court

LC No. 01-000034-DL

Before: Meter, P.J., and Wilder and Schuette, JJ.

PER CURIAM.

Following the dismissal of juvenile delinquency charges against respondent, petitioner appeals as of right to challenge the trial court's decision granting respondent's motion to suppress evidence obtained by the police after a warrantless entry into respondent's residence. We reverse.

Petitioner contends on appeal that the warrantless entry and search at issue was justified under the exigent circumstances exception to the search warrant requirement. We agree. We review *de novo* the trial court's ultimate decision on the suppression motion, but review underlying findings of fact for clear error. *People v Beuschlein*, 245 Mich App 744, 748; 630 NW2d 921 (2001).

Generally, searches conducted without a warrant are *per se* unreasonable under the Fourth Amendment unless the relevant police conduct falls under an established exception to the warrant requirement. *Beuschlein, supra* at 749. Michigan case law provides the following description of the exigent circumstances exception to the search warrant requirement:

Pursuant to the exigent circumstances exception, we hold that the police may enter a dwelling without a warrant if the officers possess probable cause to believe that a crime was recently committed on the premises, and probable cause to believe that the premises contain evidence or perpetrators of the suspected crime. The police must further establish the existence of an actual emergency on the basis of specific and objective facts indicating that immediate action is necessary to (1) prevent the imminent destruction of evidence, (2) protect the

police officers or others, or (3) prevent the escape of a suspect. [*Beuschlein, supra* at 749-750, quoting *In re Forfeiture of \$176,598*, 443 Mich 261, 271; 505 NW2d 201 (1993).]

We conclude that the trial court clearly erred by concluding that petitioner failed to present evidence of an “actual emergency” sufficient to justify a warrantless entry.

First, warrantless entry was justified to prevent the removal or destruction of evidence. The testimony established that around 12:30 a.m. police observed occupants of the residence drinking and smoking the contraband they had observed. It is axiomatic that the use of the contraband constituted destruction of the same. Moreover, in order for the officers to obtain a warrant, one of the two of them had to leave the premises to contact a prosecutor and a magistrate. The officer who stayed at the scene would have been unable to secure the scene to prevent the continued use, and therefore destruction, of at least some of the remaining contraband before a warrant was obtained. Second, warrantless entry was also justified to prevent the escape of any of the occupants using the contraband. Had one officer left to obtain a warrant, the remaining officer would not have been able to secure the two doors and multiple windows at the residence to prevent the escape of many of the suspects who decided to leave the premises.

Reversed.

/s/ Patrick M. Meter

/s/ Kurtis T. Wilder

/s/ Bill Schuette